

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Application by Qwest Communications)

International Inc. for Authorization to Provide)

In-Region, InterLATA Services in Arizona)

WC Docket No. 03 -194

MEMORANDUM OPINION AND ORDER

Adopted: December 3, 2003

Released: December 3, 2003

By the Commission: Commissioner Abernathy issuing a separate statement, and Commissioners Copps and Adelstein issuing a joint statement.

TABLE OF CONTENTS

| | Paragraph |
|-----------------------------------------------------------|-----------|
| I. INTRODUCTION..... | 1 |
| II. BACKGROUND | 4 |
| III. PRIMARY ISSUES IN DISPUTE..... | 10 |
| A. CHECKLIST ITEM 2 – UNBUNDLED NETWORK ELEMENTS..... | 12 |
| 1. Operations Support Systems | 13 |
| B. CHECKLIST ITEM 4 – UNBUNDLED LOCAL LOOPS..... | 26 |
| IV. OTHER CHECKLIST ITEMS | 30 |
| A. CHECKLIST ITEM 2 | 30 |
| 1. Other OSS Issues | 30 |
| 2. Pricing Unbundled Network Elements | 33 |
| B. REMAINING CHECKLIST ITEMS (1, 3, AND 5-14)..... | 40 |
| V. COMPLIANCE WITH SECTION 271(c)(1)(A)..... | 41 |
| VI. SECTION 272 COMPLIANCE..... | 43 |
| VII. PUBLIC INTEREST ANALYSIS..... | 47 |
| A. ASSURANCE OF FUTURE COMPLIANCE | 51 |
| B. UNFILED INTERCONNECTION AGREEMENTS | 55 |
| VIII. SECTION 271(d)(6) ENFORCEMENT AUTHORITY..... | 58 |
| IX. CONCLUSION | 61 |
| X. ORDERING CLAUSES | 62 |

APPENDIX A – LIST OF COMMENTERS

APPENDIX B – ARIZONA PERFORMANCE DATA

APPENDIX C – STATUTORY REQUIREMENTS

I. INTRODUCTION

1. On September 4, 2003, Qwest Communications International Inc. (Qwest) filed an application pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, interLATA services originating in the state of Arizona.² We grant Qwest's application in this Order based on our conclusion that it has taken the statutorily required steps to open its local exchange market in Arizona to competition.

2. This Order marks the culmination of years of extraordinary work by the state commissions. We take this opportunity here, in the Commission's last section 271 application, to commend all the state commissions for their work in this area since passage of the 1996 Act. Today, we are reviewing a Bell operating company's (BOC's) performance that has been shaped and refined by the Arizona Corporation Commission (Arizona Commission). The Arizona Commission and its staff performed an exhaustive review of Qwest's compliance with its section 271 obligations spanning four years and resulting in several dozen orders. Their efforts facilitated "an almost complete transformation of Qwest's systems and processes from one that was not conducive to local competition to one that . . . will foster local competition."³ In addition to supervising its own third-party test of Qwest's operations support systems (OSS), the Arizona Commission oversaw the development of a comprehensive set of performance measurements known as performance indicator definitions (PIDs), reexamined Qwest's wholesale pricing, rewrote Qwest's Statement of Generally Available Terms and Conditions (SGAT), and opened enforcement dockets to review issues concerning agreements between Qwest and certain competitors that were not filed as interconnection agreements with the Arizona Commission for its approval.⁴ Moreover, the Arizona Commission developed and adopted its own Performance Assurance Plan (PAP) to ensure that Qwest will continue to adhere to its performance obligations after it receives section 271 authority.⁵

¹ We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and other statutes, as the Communications Act or the Act. See 47 U.S.C. §§ 151 *et seq.* We refer to the Telecommunications Act of 1996 as the 1996 Act. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

² See *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, WC Docket No. 03-194 (filed Sept. 4, 2003) (Qwest Application).

³ Arizona Commission Comments at 5.

⁴ *Id.* at 3-5. See also *id.* at 5 (noting that Arizona will participate in a Qwest region-wide PID collaborative to modify PIDs, as necessary, on a going-forward basis).

⁵ *Id.* at 5.

3. The Arizona Commission's outstanding work in conjunction with Qwest's extensive efforts has resulted in competitive entry in Arizona. As of May 31, 2003, Qwest estimates that competitive local exchange carriers (LECs) served approximately 20 percent of all lines in Arizona, including 37,719 stand-alone loops and 62,713 unbundled network element (UNE)-Platform loops.⁶ We are confident that the Arizona Commission's and Qwest's hard work to open the local exchange market in Arizona to competition will benefit consumers by making increased competition in all telecommunications service markets possible in this state. Finally, we are also confident that the Arizona Commission will be vigilant in ensuring that Qwest continues to meet its statutory obligations.

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the BOCs demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service.⁷ Congress provided for Commission review of BOC applications to provide such service in consultation with the relevant state commission and the U.S. Attorney General.⁸ In our examination of this application, we rely heavily on the work completed by the Arizona Commission. We summarize the Arizona state proceeding below.

5. On February 8, 1999, Qwest served notice on the Arizona Commission of its intention to seek section 271 authority in that state.⁹ Shortly thereafter, the Arizona Commission directed Qwest to supplement its filing and established a procedural framework to examine Qwest's request.¹⁰ Later that year, the Arizona Commission bifurcated the OSS-related checklist items from the non-OSS-related items and instituted a series of workshops and meetings to evaluate Qwest's performance in both areas.¹¹ Also in late 1999, the Arizona Commission

⁶ See Qwest Application at 2; Qwest Application, App. A, Tab 2, Declaration of David L. Teitzel (Qwest Teitzel Decl.) at para. 15.

⁷ See 47 U.S.C. § 271.

⁸ 47 U.S.C. §§ 271(d)(2)(A), (B). The Commission has summarized the relevant statutory framework in prior orders. See, e.g., *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (*Sprint v. FCC*); *Application by SBC Communications Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (2000) (*SWBT Texas Order*).

⁹ Arizona Commission Comments at 6.

¹⁰ *Id.* at 7.

¹¹ See *id.*; Qwest Application at 2 (stating that the Arizona Commission held 40 workshops that totaled more than 100 days of hearings).

retained Cap Gemini Ernst & Young (CGE&Y) to serve as the OSS third-party tester.¹² CGE&Y filed its Final Test Report on March 30, 2002,¹³ and on August 21, 2003, the Arizona Commission determined that Qwest satisfied checklist item 2 with respect to OSS.¹⁴ Meanwhile, in a series of orders issued between 2000 and 2002, the Arizona Commission concluded that Qwest satisfied the other checklist items.¹⁵ Finally, on September 29, 2003, the Arizona Commission released an order finding that Qwest's section 271 application was in the public interest.¹⁶

6. The U.S. Department of Justice recommends approval of this application after determining that Qwest has "generally succeeded in opening its local markets in Arizona to competition."¹⁷ The Department of Justice concludes that opportunities are available to competitive carriers serving residential and business customers.¹⁸

7. *Compliance with Unbundling Rules.* As part of the required showing in this proceeding, as explained in more detail below, the applicant must demonstrate that it satisfies the Commission's rules governing UNEs. It is necessary to clarify, for the purpose of evaluating this application, which network elements we expect Qwest to demonstrate that it provides on an unbundled basis, pursuant to section 251(c)(3) and checklist item 2. In the *UNE Remand and Line Sharing Orders*, the Commission established the following list of UNEs that incumbent LECs were obliged to provide: (1) local loops and subloops; (2) network interface devices; (3) switching capability; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) OSS; and (7) the high frequency portion of the loop.¹⁹ However, the U.S.

¹² Arizona Commission Comments at 3; Qwest Application, App. A, Tab 30, Declaration of Lynn M.V. Notarianni and Loretta A. Huff (Qwest Notarianni/Huff Decl.) at para. 22.

¹³ See Arizona Commission Comments at 7. See also Qwest Notarianni/Huff Decl. at para. 77 n.106 (explaining that CGE&Y filed a corrected version in May 2002).

¹⁴ Arizona Commission Comments at 11, 23; Qwest Application at 76.

¹⁵ See Arizona Commission Comments at 8-18; Qwest Application, App. A, Tab 1, Declaration of Patrick Quinn at paras. 23-24, 28-29, 32, 40, 43, 50, 56-57, 62, 67, 74, 78-79, 87.

¹⁶ See Letter from Hance Haney, Executive Director - Federal Relations, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194, Attach. (filed Oct. 1A, 2003) (*Arizona Commission Sept. 29 Order*). We note that one commissioner dissented. See *Arizona Commission Sept. 29 Order* at 35. In order to distinguish *ex parte* filings that might be made with the Commission on the same day, Qwest assigns a letter to the date on which it submits its filing (e.g., Oct. 1A, 2003). We will use Qwest's filing system when citing to its *ex parte* letters.

¹⁷ See Department of Justice Evaluation at 2. The Department of Justice states that the Commission should consider whether Qwest's regionwide change management process (CMP), as well as Qwest's compliance with the CMP, continue to be adequate. *Id.* at 6 n.20.

¹⁸ *Id.* at 6.

¹⁹ See 47 C.F.R. § 51.319; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*); *Deployment of Wireline Services Offering Advanced Telecommunications* (continued....)

Court of Appeals for the District of Columbia Circuit vacated these orders in 2002 and instructed the Commission to reevaluate the network elements subject to the unbundling requirement.²⁰ The court's mandate was stayed first until January 3, 2003 and then until February 20, 2003. On February 20, 2003, the Commission adopted new unbundling rules as part of our Triennial Review proceeding.²¹ These rules became effective on October 2, 2003.²²

8. Although the former unbundling rules vacated by the D.C. Circuit were not in force at the time Qwest filed its application in this proceeding, Qwest states that it continues to provide nondiscriminatory access to these network elements.²³ As the Commission found in the *Bell Atlantic New York Order*, we believe that using the network elements identified in the former unbundling rules as a standard in evaluating Qwest's application, filed during the interim period between the time the rules were vacated by the D.C. Circuit and the effective date of the new rules, is a reasonable way to ensure that the application complies with the checklist requirements.²⁴ We find it significant that no commenter disputes that Qwest should be required to demonstrate that it provides these network elements in a nondiscriminatory manner. Accordingly, for the purposes of this application, we will evaluate whether Qwest provides nondiscriminatory access to the network elements identified under the former unbundling rules.

(Continued from previous page)

Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147, 96-98, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

²⁰ See *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), cert. denied, 123 S. Ct. 1571 (2003).

²¹ See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), corrected by Errata, 18 FCC Rcd 19020 (2003), petitions for review pending, *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases).

²² See 68 FR 52307 (Sept. 2, 2003).

²³ See Qwest Application at 24-25; see also *Application by Qwest Communications International Inc., for Authorization to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, Memorandum Opinion and Order, 18 FCC Rcd 13323, 13326-28, paras. 8-9 (2003) (*Qwest Minnesota Order*).

²⁴ See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3966-67, para. 30 (1999) (*Bell Atlantic New York Order*), aff'd, *AT&T Corp v. FCC*, 220 F.3d 607 (D.C. Cir. 2000). A similar procedural situation was presented in the Bell Atlantic New York proceeding after the Commission's original unbundling rules had been vacated by the Supreme Court. Bell Atlantic filed its application for section 271 authorization in New York after the original unbundling rules had been vacated but before the *UNE Remand Order* had taken effect and, thus, at a time when no binding unbundling rules were in effect. Bell Atlantic suggested, and the Commission agreed, that it would be reasonable for the Commission to use the original seven network elements identified in the former unbundling rules in evaluating compliance with checklist item 2 of the application. See *Bell Atlantic New York Order*, 15 FCC Rcd at 3966-67, paras. 29-31.

9. We also note that the *Triennial Review Order* introduced new rules which became binding after Qwest filed its section 271 application for Arizona on September 4, 2003. While we require Qwest to demonstrate that it is in compliance with the former rules, we do not require Qwest to demonstrate as of the date of its section 271 filing that it complies with rules that became effective during the pendency of its application. Although Qwest, like all other incumbent LECs, was required to comply with the new rules at the time they became effective, we believe it would be unfair to require Qwest, in its application, to demonstrate compliance with rules that become effective after it files an application for section 271 authorization, in advance of the effective date for other incumbent LECs. This approach is reasonable and consistent with our analysis in the *SWBT Texas Order*.²⁵ We emphasize that, on an ongoing basis, Qwest must comply with all of the Commission's rules implementing the requirements of sections 251 and 252 upon the dates specified by those rules, including the new unbundling rules.²⁶

III. PRIMARY ISSUES IN DISPUTE

10. As in recent section 271 orders, we do not repeat here the analytical framework and particular legal showing required to establish compliance with every checklist item. Rather, we rely upon the legal and analytical precedent established in prior section 271 orders,²⁷ and we attach comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.²⁸ Our conclusions in this Order are based on performance data as reported in carrier-to-carrier reports reflecting Qwest's service for the following five-month period: April 2003 through August 2003.

11. After providing some background on Qwest's OSS and CGE&Y's test, we focus in this section on the issues in controversy in the record. Accordingly, we begin by addressing Qwest's compliance with checklist item 2. Specifically, we address whether Qwest has an adequate CMP in place to accommodate changes to its systems. Although we provide an overview of OSS in this section, including Qwest's region-wide OSS, and a discussion of the third-party test in Arizona, we note that only one aspect of Qwest's OSS – change management – was contested. We also address issues concerning checklist item 4, which evaluates access to unbundled local loops.²⁹

²⁵ See *SWBT Texas Order*, 15 FCC Rcd at 18367-70, paras. 28-33 (declining to require the applicant to demonstrate compliance with the parts of the new unbundling rules that became effective while the proceeding was pending).

²⁶ See *id.* at 18368, para. 29; *Bell Atlantic New York Order*, 15 FCC Rcd at 3967, para. 31.

²⁷ See, e.g., *Qwest Minnesota Order*, 18 FCC Rcd at 13328, para. 10; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6241-42, paras. 7-10; *SWBT Texas Order*, 15 FCC Rcd at 18359-61, paras. 8-11; *Bell Atlantic New York Order*, 15 FCC Rcd at 3961-63, paras. 17-20; see also App. C (Statutory Requirements).

²⁸ See generally Appendices B (Performance Data) and C (Statutory Requirements).

²⁹ See *infra* Section III.B.

A. Checklist Item 2 – Unbundled Network Elements

12. Checklist item 2 of section 271 states that a BOC must provide “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)” of the Act.³⁰ Based on the record, we find that Qwest has satisfied the requirements of checklist item 2. In this section, we address the one aspect of this checklist item – OSS – that raised significant issues concerning whether Qwest’s performance demonstrates compliance with the Act. Aside from OSS, other UNEs that Qwest must make available under section 251(c)(3) are also listed as separate items on the competitive checklist, and are addressed below in separate sections for various checklist items, as are any provisioning issues that may be in dispute.³¹

1. Operations Support Systems

13. Under checklist item 2, a BOC must demonstrate that it provides nondiscriminatory access to the five OSS functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing.³² In addition, a BOC must show that it provides nondiscriminatory access to UNEs and that it has an adequate CMP in place to accommodate changes made to its systems.³³ Based on the evidence in the record, we find, as did the Arizona Commission, that Qwest provides nondiscriminatory access to its OSS.³⁴ Consistent with prior Commission orders, we do not address each OSS element in detail where our review of the record satisfies us that there is little or no dispute that Qwest meets the nondiscrimination requirements.³⁵ For instance, Qwest met the applicable performance standards for both pre-ordering and maintenance and repair, and no party contests these parts of Qwest’s OSS in this

³⁰ 47 U.S.C. § 271(c)(2)(B)(ii).

³¹ See 47 U.S.C. § 271(c)(2)(B). For example, unbundled loops, transport, and switching are listed separately in the statute as checklist items iv, v, and vi.

³² *Bell Atlantic New York Order*, 15 FCC Rcd at 3989, para. 82. The Commission has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide service to their customers. *SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92.

³³ See *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, WC Docket No. 02-134, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26320, para. 34 (2002) (*Qwest 9-State Order*); *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102 & n.280.

³⁴ Arizona Commission Comments at 11.

³⁵ See *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, 16 FCC Rcd 14147, 14151-52, para. 9 (2001) (*Verizon Connecticut Order*). Although Qwest’s ordering, provisioning, and billing processes received little or no attention from the commenting parties, we discuss these domains briefly below because of Qwest’s performance with respect to one or two metrics in each of these domains. See *infra* Section IV.A.1.

proceeding. Therefore, we focus our discussion on those issues in controversy, which in this instance involves certain elements of Qwest's change management systems and processes.³⁶

14. In reaching our conclusion that Qwest has demonstrated it provides nondiscriminatory access to its OSS, we rely on detailed evidence provided by Qwest in this proceeding. We base this determination generally on Qwest's actual commercial performance in the state of Arizona. Consistent with our past practice, we note that in the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have denied new entrants a meaningful opportunity to compete.³⁷ Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.³⁸

a. Independent Third-Party Testing

15. As the Commission has held in prior section 271 proceedings, the persuasiveness of a third-party OSS review depends upon the conditions and scope of the review.³⁹ Based on our

³⁶ On September 22, 2003, Eschelon submitted an *ex parte* filing in this proceeding, which it later re-filed with consecutive page numbers. See Letter from Kim K. Wagner, Senior Legal Secretary, Eschelon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 (filed Sept. 22, 2003); *Ex Parte* Filing by Eschelon (filed Oct. 8, 2003). In its filing, Eschelon includes copies of, among other things, numerous e-mails to Qwest and the Department of Justice, pleadings made with the Arizona Commission in that state's section 271 proceeding, and complaints filed in a federal district court in Seattle and with the Minnesota Public Utilities Commission. We exercise our authority to decline to consider this Eschelon filing. As clearly stated in the Public Notice released on the date that Qwest filed its application, participants in a section 271 proceeding have an obligation to present their position in a clear and concise manner. See *Comments Requested on the Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the State of Arizona*, DA 03-2799 (Sept. 4, 2003), Attach. at 4 (*Updated Filing Requirements for the Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, Public Notice, 16 FCC Rcd 20948 (2001) (March 23 Public Notice)). Specifically, the Commission has made clear that, because it is burdensome and time-consuming in the context of a statutorily-imposed 90-day proceeding to attempt to determine a party's position by culling through the supporting material, participants are required to make all substantive legal and policy arguments in a legal brief. *Id.* Moreover, as noted by the United States Court of Appeals for the District of Columbia Circuit, the Commission "need not sift pleadings and documents to identify" arguments that are not "stated with clarity." *Id.* at n.7 (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)). It is the burden of the petitioner to clarify its position before the agency and Eschelon fails to meet this burden. See March 23 Public Notice at n.7 (citing *Northside Sanitary Landfill, Inc. v. Thomas*, 849 F.2d 1516, 1519 (D.C. Cir. 1988), *cert. denied*, 489 U.S. 1078 (1989)).

³⁷ See *Qwest 9-State Order*, 17 FCC Rcd at 26321-22, para. 37.

³⁸ *Id.*

³⁹ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 3993, para. 89; *Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization to Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, Memorandum Opinion and Order, 17 FCC Rcd 25650, 25685, para. 73 (2002) (*SBC California Order*); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20659, para. 216 (1997) (*Ameritech Michigan Order*).

review of the evidence in the record describing the test process, and the evaluation that the Arizona Commission offered, we find that the third-party OSS test was broad and objective, and provides meaningful evidence that is relevant to our analysis of Qwest's OSS. The results of this test support our finding that Qwest provides nondiscriminatory access to its OSS.

16. In late 1999, the Arizona Commission hired CGE&Y to conduct a third-party test of Qwest's OSS.⁴⁰ The Arizona Commission also hired Hewlett Packard Company (HP) to serve as a pseudo-competitive LEC in the test process.⁴¹ CGE&Y and the Arizona Commission established the Technical Advisory Group (TAG) to serve as an open and collaborative forum to work through and resolve all test-related issues.⁴² The members of TAG included the Arizona Commission, CGE&Y, competitive LECs, Qwest, and test vendors as well as other interested parties.⁴³ As part of this process, TAG members worked together to develop the PIDs, a Master Test Plan and a Test Standards Document that governed the third-party test.⁴⁴ The CGE&Y review included five primary components designed to evaluate Qwest's OSS: (1) Performance Measurement Audit (PMA); (2) Functionality Test; (3) Retail Parity Evaluation; (4) Capacity Test; and (5) Relationship Management Evaluation.⁴⁵ CGE&Y conducted the PMA to ensure that Qwest adequately measures and reports the commercial data for the reports, and it used a military-style, test-until-pass methodology to test the remaining four test components.⁴⁶ In order to verify the integrity of Qwest commercial data, the Arizona Commission also retained Liberty Consulting to perform a data reconciliation between Qwest and competing carriers.⁴⁷ Throughout the course of the third-party test, CGE&Y prepared and monitored test schedules, collected test status reports from parties, submitted status reports to the Arizona Commission, and analyzed test results.⁴⁸ In performing the third-party OSS test, CGE&Y took precautions to maintain, to

⁴⁰ Arizona Commission Comments at 3; Qwest Notarianni/Huff Decl. at para. 22.

⁴¹ Arizona Commission Comments at 3; Qwest Notarianni/Huff Decl. at para. 23.

⁴² Arizona Commission Comments at 3; Qwest Notarianni/Huff Decl. at para. 24.

⁴³ Arizona Commission Comments at 9; Qwest Notarianni/Huff Decl. at para. 24.

⁴⁴ Arizona Commission Comments at 9; Qwest Notarianni/Huff Decl. at para. 28. The TAG initially drafted the Arizona Commission PIDs in 1999 while the other 13 state commissions in Qwest's incumbent LEC region were working together through the multi-agency organization called the Regional Oversight Committee (ROC) to test Qwest's OSS. Qwest Notarianni/Huff Decl. at para. 17. With some modifications, these PIDs formed the basis for the ROC's performance measurement evaluation and OSS testing process. Arizona Commission Comments at 3. The Arizona TAG ultimately adopted the PID definitions in the ROC PID version 5.0 subject to specific Arizona standards. Qwest Application at 9-10. Thereafter, Qwest created a 14-state PID version 5.0 to combine the separate Arizona PIDs with the 13-state ROC PIDs. *Id.* at 10.

⁴⁵ Arizona Commission Comments at 9-10; Qwest Notarianni/Huff Decl. at para. 33.

⁴⁶ Qwest Notarianni/Huff Decl. at paras. 34-36. *See also Bell Atlantic New York Order*, 15 FCC Rcd at 3998, para. 98 (describing a military-style testing process).

⁴⁷ Arizona Commission Comments at 10; Qwest Application at 13-14.

⁴⁸ Qwest Notarianni/Huff Decl. at para. 22.

the extent possible, the “blindness” and independence of the testing process. For example, CGE&Y ensured that Qwest was not aware of HP’s identity during tests.⁴⁹ As explained above, competitive LECs participated in the design of the CGE&Y test and played an important role in the test process.⁵⁰

17. CGE&Y filed its final update on its Arizona OSS operational tests on March 30, 2002.⁵¹ In all, in the course of testing, 399 issues were documented and addressed collaboratively through TAG.⁵² At the conclusion of the test, the Arizona Commission stated that, “Qwest’s OSS meets the performance standards envisioned by the Act . . . [and] the Performance Measurements have been evaluated and found to be timely and accurate.”⁵³ We conclude that the CGE&Y third-party test demonstrates that Qwest’s reported data are reliable, and that the results provide important evidence that Qwest is providing nondiscriminatory access to its OSS. We note that no competitive LEC challenges the integrity of CGE&Y’s test or the reliability of Qwest’s performance measurement data.

b. Relevance of Qwest’s Regionwide OSS

18. Consistent with our precedent,⁵⁴ Qwest also relies in this application on evidence concerning its regionwide OSS.⁵⁵ Although Arizona did not participate in the ROC third-party test, Qwest asserts that the test’s findings apply equally to Arizona because Qwest uses the same OSS in Arizona as in several of the states that participated in the ROC test.⁵⁶ As discussed in the prior Qwest 271 orders, to support its claim that its OSS are the same across all states, Qwest relies on the comprehensive BearingPoint test.⁵⁷ BearingPoint, in addition to administering the overall test, performed a regional differences assessment (RDA), which showed that Qwest’s

⁴⁹ Arizona Commission Comments at 3; Qwest Notarianni/Huff Decl. at para. 23.

⁵⁰ Arizona Commission Comments at 4 (noting that several competitive LECs provided facilities and expertise to CGE&Y during the OSS test); Qwest Notarianni/Huff Decl. at paras. 24, 29.

⁵¹ Arizona Commission Comments at 10.

⁵² Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 at 3 (filed Oct. 23A, 2003) (Qwest Oct. 23A Ex Parte Letter); Qwest Notarianni/Huff Decl. at paras. 73-78.

⁵³ Arizona Commission Comments at 11.

⁵⁴ See, e.g., *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6254, para. 36.

⁵⁵ Qwest Application at 75-76.

⁵⁶ *Id.* at 76 (citing Colorado, New Mexico, and Utah).

⁵⁷ See *Qwest 9-State Order*, 17 FCC Rcd at 26321, para. 36; *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon, and South Dakota*, WC Docket No. 03-11, Memorandum Opinion and Order, 18 FCC Rcd 7325, 7344-45, paras. 36-37 (2003) (*Qwest 3-State Order*); *Qwest Minnesota Order*, 18 FCC Rcd at 13331, paras. 16-17.

ordering, provisioning, maintenance and repair, and competitive LEC relationship management and infrastructure are materially consistent across Qwest's operating territory.⁵⁸

19. Where Qwest provides evidence that a particular system used in Arizona is the same as the one that the Commission reviewed and approved in one of the 13 states where Qwest received section 271 approval,⁵⁹ our review will be informed by our previous findings in the relevant Qwest order.⁶⁰ We find that Qwest, through the BearingPoint test and its declarations, provides sufficient evidence that its OSS in Arizona are generally the same as in the 13 states.

c. Change Management

20. We agree with the Arizona Commission that Qwest's CMP and Qwest's pattern of compliance with the CMP satisfy this aspect of checklist item 2.⁶¹ In previous section 271 orders, the Commission has explained that it must review the BOC's change management procedures to determine whether they provide sufficient access to the BOC's OSS and thus afford an efficient competitor a meaningful opportunity to compete.⁶² In evaluating a BOC's change management plan, we first assess whether the plan is adequate by determining whether the evidence demonstrates: (1) that information relating to the CMP is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the CMP; (3) that the CMP defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.⁶³ After determining that the BOC's change

⁵⁸ See, e.g., *Qwest Minnesota Order*, 18 FCC Rcd at 13331, para. 16. BearingPoint investigated whether there were any differences in systems and processes throughout Qwest's operating territory. *Qwest Notarianni/Huff Decl.* at para. 97 & Ex. LN-OSS-4. BearingPoint reviewed the following Qwest regions: 1) western region covering Washington and Oregon; 2) central region covering Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming; and 3) eastern region covering Iowa, Minnesota, Nebraska, North Dakota, and South Dakota. *Id.* at paras. 96-99 & Ex. LN-OSS-4.

⁵⁹ *Qwest Application* at 75-76.

⁶⁰ E.g., *Qwest Minnesota Order*, *Qwest 9-State Order*, and the *Qwest 3-State Order*. See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6253-54, para. 35. Indeed, to the extent that certain issues have been previously briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for relitigating and reconsidering those issues. *Id.*

⁶¹ Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 (filed Sept. 24A, 2003) (*Qwest Sept. 24A Ex Parte Letter*), Attach. 2 at 21-22 (*Arizona Commission Aug. 28 Order*).

⁶² *Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, paras. 102-03; *SWBT Texas Order*, 15 FCC Rcd at 18403-04, paras. 106-08.

⁶³ *SWBT Texas Order*, 15 FCC Rcd at 18404, para. 108.

management plan is adequate, we evaluate whether the BOC has demonstrated a pattern of compliance with this plan.⁶⁴

21. At the outset, we note that Qwest's CMP applies to its entire 14-state region, and the Commission previously has found that Qwest complied with this part of the checklist in the 13 states for which Qwest has been granted section 271 approval to date.⁶⁵ Nevertheless, where a CMP has changed, we must examine whether the new CMP remains compliant.⁶⁶ In addition, we agree with the Department of Justice that the "CMP is a dynamic process," and that we must consider whether Qwest has continued to comply with the CMP.⁶⁷ Commenters' change management allegations fall into two categories: (1) Qwest's CMP documentation is insufficient because it does not include deadlines by which Qwest must repair software defects and (2) Qwest violated the CMP when it decided to charge competitive LECs for DS1 loop conditioning.

22. *Software Defects.* AT&T and MCI argue that the CMP should include deadlines for Qwest to repair software defects, according to their severity.⁶⁸ AT&T and MCI complain that Qwest vetoed MCI's change management proposal that such requirements be incorporated into the CMP.⁶⁹ In previous orders, the Commission has noted the "importance of reducing the

⁶⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, 4004-05, paras. 101, 112.

⁶⁵ See Qwest Application, App. A, Tab 6, Declaration of Judith M. Schultz (Qwest Schultz Decl.) at para. 3 ("the change management process is the same in all 14 Qwest states"); *Qwest 9-State Order*, 17 FCC Rcd at 26384-96, paras. 132-52; *Qwest 3-State Order*, 18 FCC Rcd at 7355-61, paras. 54-62; *Qwest Minnesota Order*, 18 FCC Rcd at 13342, para. 39.

⁶⁶ We have noted previously that we are open to consideration of change management plans that differ from those already found to be compliant with the requirements of section 271. *Bell Atlantic New York Order*, 15 FCC Rcd at 4004, para. 111; *SWBT Texas Order*, 15 FCC Rcd at 18404, para. 109.

⁶⁷ Department of Justice Evaluation at 6 n.20 ("The Department urges the Commission to consider whether Qwest's CMP, as well as its compliance with that process, continues to be adequate.").

⁶⁸ AT&T Comments at 27; MCI Comments at 1-2.

⁶⁹ AT&T Comments at 27-28; MCI Comments at 1-2. AT&T also contends that, instead of conceding a software defect, Qwest argues under the current CMP that the software has not been properly documented and that a fix to the documentation will permit the competitive LECs to use the software as Qwest intended. AT&T Comments at 26-28. We find no basis in the record to conclude that Qwest's classification of errors as ones of documentation is designed to be anticompetitive or is done in bad faith. Moreover, in previous Qwest section 271 orders, we rejected arguments that Qwest's OSS requirements were inadequately documented. See *Qwest 9-State Order*, 17 FCC Rcd at 26391-92, para. 144 (finding that the documentation Qwest supplies to competitive LECs is "robust"). See also *Qwest 3-State Order*, 18 FCC Rcd at 7355-57, paras. 55-57; *Qwest Minnesota Order*, 18 FCC Rcd at 13342, para. 39.

In addition, MCI contends that Qwest should include all software trouble reports in a single document. MCI Comments at 2. The Commission has never mandated such a requirement in a section 271 proceeding, and we will not do so in the instant Order. Qwest has a process in place for notifying competitive LECs of software trouble reports that the Commission has previously considered and approved. Moreover, according to Qwest, this competitive LEC change request remains under discussion in the CMP, which, as the Arizona Commission and its staff found, is the appropriate forum to address such issues. See Qwest Reply, Attach. B, Reply Declaration of Lynn (continued....)

number of [software] coding defects that require competing carriers to modify electronic processes.”⁷⁰ The Commission has also noted that “[w]hile a change management process must include assurances that changes to existing OSS interfaces will not disrupt competing carriers’ use of the BOC’s OSS, the Commission has not required any particular safeguard.”⁷¹

23. The Commission has never mandated that a CMP contain deadlines to repair software defects, and we decline to impose such a requirement here. We agree with the Arizona Commission that the CMP is the appropriate and adequate forum for MCI and AT&T to raise these complaints, the parties are in fact using the CMP process to resolve them, and Qwest’s current management of software defects does not warrant a finding of checklist noncompliance.⁷² The record reflects that Qwest has been actively engaged in working with AT&T and MCI to resolve software defect management issues through the CMP. While Qwest objected to firm timeframes, contending that it is impossible to predict how long every software repair will take, we find that Qwest offered the competitive LECs a good faith compromise.⁷³ Qwest proposed to set deadlines for correcting software defects, according to their level of severity, in the CMP but, in recognition that some software corrections might require additional time, Qwest also sought flexibility to notify competitive LECs that the software would be corrected by a later date certain, if necessary.⁷⁴ In addition, we find that the Arizona Commission has taken appropriate steps to ensure that Qwest’s CMP performance does not create competitive problems, and there is no indication at this time that Qwest would be able to abuse any deadline flexibility that it may be given.

24. *Pattern of Compliance with the CMP.* We reject AT&T’s complaint that Qwest does not comply with the CMP based on action Qwest took concerning DS1 loop conditioning. According to AT&T, Qwest reversed its previous loop provisioning policy by imposing on

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M.V. Notarianni and Loretta A. Huff (Qwest Notarianni/Huff Reply Decl.) at paras. 22-23. See also *id.*, Ex. LN-3 (Transcript of Sept. 8, 2003 Arizona Commission Open Meeting).

⁷⁰ See *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9129-30, para. 195 (2002) (*BellSouth Georgia/Louisiana Order*).

⁷¹ *Qwest 9-State Order*, 17 FCC Rcd at 26389, para. 140 n.523 (citing *Bell Atlantic New York Order*, 15 FCC Rcd at 4004-05, para. 110; *SWBT Texas Order* 15 FCC Rcd at 18406, para. 112).

⁷² *Qwest Notarianni/Huff Reply Decl.* at paras. 3-4 & Ex. LN-3. The Commission has previously found that the Qwest CMP contains adequate processes to detect software defects and implement fixes. See *Qwest 9-State Order*, 17 FCC Rcd at 26323, para. 39 n.104 (finding that Qwest uses an extensive help-desk ticket and notification process to handle errors that may occur when implementing new software). See also *id.* at 26389-90, para. 140 (finding that the Qwest CMP gave the competitive LECs sufficient time to test new software versions prior to their release). The Qwest CMP sets priorities for repair of software defects according to four severity levels, with the highest ones requiring that trouble tickets be “implemented immediately.” *Qwest Notarianni/Huff Decl.* at para. 10 & n.11 (quoting section 12 of the Qwest CMP).

⁷³ *Qwest Notarianni/Huff Reply Decl.* at para. 13.

⁷⁴ *Id.* at para. 13.

competitive LECs loop conditioning charges for DS1-capable loops and, in doing so, Qwest failed to comply with the CMP when it announced this policy change to competitive LECs.⁷⁵ Specifically, AT&T argues that Qwest misclassified its revisions as a Level 3 (or "moderate") change instead of Level 4 (or "severe") and unilaterally imposed loop conditioning charges on competitive LECs not required by the terms of their interconnection agreements with Qwest.⁷⁶

25. We disagree that this one-time occurrence demonstrates a pattern of noncompliance with the CMP.⁷⁷ Even if Qwest erroneously classified the DS1 loop conditioning change as Level 3, we conclude that such a misclassification does not warrant a finding of checklist noncompliance.⁷⁸ Furthermore, as noted above, the Arizona Commission has committed to overseeing Qwest's ongoing compliance with the CMP and has required Qwest to continue reporting on its CMP compliance.⁷⁹

B. Checklist Item 4 – Unbundled Local Loops

26. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."⁸⁰ Based on the evidence in the record, we conclude, as did the Arizona Commission,⁸¹ that Qwest provides unbundled local loops in accordance with the requirements of section 271 and our rules.⁸² Our conclusion is based on our review of Qwest's performance

⁷⁵ See AT&T Comments at 6.

⁷⁶ *Id.* at 15-17 (explaining that in the event of a conflict between the CMP and the interconnection agreement, the latter prevails).

⁷⁷ We note that the Arizona Commission reviewed Qwest's revised DS1 loop conditioning rate change and expressed concern that Qwest did not seek prior Arizona Commission approval. See Qwest Sept. 24A *Ex Parte* Letter, Attach. 3 at 29-31 (*Arizona Commission Sept. 16 Order*) (directing Qwest to reinstitute its prior policy and to provide refunds to any competitive LECs relating to these unauthorized charges). The Arizona Commission also noted that loop conditioning charges are the proper subject of Phase III of its cost docket. *Id.* at 31. The Arizona Commission did not, however, render any findings concerning Qwest's adherence to the CMP. Finally, because competitive LECs may raise their objections to any rate change before the Arizona Commission, we reject AT&T's assertion that Qwest must affirm that it will not seek approval for a change in its loop conditioning policy in order for the Commission to find checklist compliance. See AT&T Reply at 6-7.

⁷⁸ During an August 21, 2003, open meeting before the Arizona Commission, Qwest indicated that, in a meeting with competitive LECs a week earlier, it agreed on a prospective basis to work its DS1 loop conditioning issue as a Level 4 change. See Qwest Application, App. P, Vol. 1, Tab 12, Transcript of Aug. 21, 2003, Special Open Meeting at 41. See also Qwest Schultz Decl. at paras. 33-34 (describing the similarities and differences between Level 3 and Level 4). Moreover, in response to AT&T's interconnection agreement complaint, we find that the dispute resolution mechanism contained in the parties' interconnection agreements, and not a section 271 proceeding, sets forth the appropriate forum to resolve an interconnection agreement dispute.

⁷⁹ *Arizona Commission Aug. 28 Order* at 22.

⁸⁰ 47 U.S.C. § 271(c)(2)(B)(iv); see also App. C, paras. 48-52 (regarding requirements under checklist item 4).

⁸¹ See Arizona Commission Comments at 13-14.

⁸² See Qwest Application at 36-46. See generally App. B.

for all loop types – which include, as in past section 271 orders, voice grade loops, digital subscriber line (xDSL)-capable loops, and high capacity loops – as well as hot cut provisioning, and Qwest's processes for line sharing and line splitting.⁸³ As of May 31, 2003, competitors have acquired from Qwest and placed into use approximately 37,719 stand-alone unbundled loops in Arizona.⁸⁴

27. *Conditioned Loops.* Based on the evidence in the record, we find that Qwest demonstrates that it provides conditioned loops in a nondiscriminatory manner.⁸⁵ Although Qwest does not achieve parity for one metric concerning installation timeliness for conditioned loops in Arizona,⁸⁶ Qwest explains that its performance results on this metric were negatively affected by human input errors, a reporting system issue, and coding errors related to a process change.⁸⁷ Qwest states that, adjusted for these errors, its average performance for the five-month period would have exceeded 90 percent.⁸⁸ We find that Qwest's explanation is persuasive and note that it has implemented programming enhancements to address the reporting system issue and employee instruction to avoid coding errors related to the process change.⁸⁹ We also note that no commenter raised issues related to this metric. Therefore, we do not find that these performance disparities warrant a finding of checklist noncompliance.

28. *High Capacity Loops.* Based on the evidence in the record, we find that Qwest demonstrates that it provides high capacity loops in a nondiscriminatory manner.⁹⁰ Qwest, however, does not achieve parity under certain metrics for DS1-capable loops.⁹¹ Qwest explains

⁸³ Our review encompasses Qwest's performance and processes for all loop types, but our discussion does not address every aspect of Qwest's loop performance where our review of the record satisfies us that Qwest's performance is in compliance with the applicable parity and benchmark measures.

⁸⁴ See Qwest Application at 37. In Arizona, as of May 31, 2003, competitive LECs had in service 30,253 unbundled voice grade analog loops, 5,578 xDSL-capable loops, 1,888 high capacity loops, and 3,654 unbundled shared loops. See *id.* at 37, 45.

⁸⁵ See *id.* at 40; Arizona Commission Comments at 13-14.

⁸⁶ See OP-3 (Installation Commitments Met) for conditioned loops showing (82.76%, 86.05%, 82.76%, 84.25%, 86.96%) for competitive LECs versus Qwest's 90% benchmark for April to August 2003.

⁸⁷ See Qwest Application at 40; Qwest Application App. A, Tab 26, Declaration of Dean Buhler (Qwest Buhler Decl.) at para. 180 & n.248; Qwest Reply, Attach. A at 6.

⁸⁸ See Qwest Application at 40; Qwest Buhler Decl. at para. 180 & n.248; Qwest Reply, Attach. A at 6; Letter from Hance Haney, Executive Director – Federal Relations, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 at 1-2 (filed Oct. 24A, 2003).

⁸⁹ See Qwest Application at 40; Qwest Buhler Decl. at para. 180 & n.248.

⁹⁰ See Qwest Application at 40-41.

⁹¹ See MR-8 (Trouble Rate) for DS1-capable loops, indicating a disparity in April, May, June, July, and August with competitive LEC results of 5.02%, 5.09%, 5.33%, 6.93%, and 8.37%, compared to Qwest results of 2.33%, 2.18%, 2.48%, 3.43%, and 3.91% respectively; MR-5 (All Troubles Cleared within 4 Hours) for DS1-capable loops, indicating a disparity in June, July, and August with competitive LEC results of 59.81%, 48.65%, and 50.81%, (continued....)

that, in October 2002, it launched a program to analyze provisioning and repair performance for unbundled DS1-capable loops and to identify areas for improvement.⁹² According to Qwest, this analysis did not uncover systemic reasons for the disparity between wholesale and retail performance.⁹³ However, in response to identified problems related to high-capacity facilities, and provisioning and repair processes, Qwest has implemented a number of initiatives to improve provisioning and repair performance for high-capacity loops in general.⁹⁴ Further, we note that no commenter raised issues related to DS1-capable loop metrics. Recognizing that high capacity loops make up a small percentage of overall loop orders in Arizona,⁹⁵ we find that Qwest's performance with respect to high capacity loops does not warrant a finding of checklist non-compliance.⁹⁶ If Qwest's performance deteriorates after approval, we will not hesitate to take appropriate enforcement action pursuant to section 271(d)(6).

29. *Other issues.* AT&T and Eschelon object to recent changes in Qwest's policy on construction of new facilities related to provisioning of high-capacity unbundled loops.⁹⁷ Specifically, these commenters explain that Qwest, since June, has changed its documentation so that competitive LECs, for the first time, must place construction orders and pay "construction charges" for line conditioning that was previously included within the category of "incremental facility work," which requires no special orders or charges.⁹⁸ They contend that, as a result of this policy change, Qwest is violating section 251(c)(3) and discriminating in favor of its retail operations.⁹⁹ In response, Qwest states that, on August 20, 2003, it notified competitive LECs

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compared to Qwest results of 68.39%, 66.57%, and 63.01% respectively; MR-6 (Mean Time to Restore) for DS1-capable loops, indicating a disparity in June, July, and August with competitive LEC results of 4:35, 5:28, and 5:36, compared to Qwest results of 3:42, 3:52, and 4:32 respectively; OP-5 (New Service Installation Quality) for DS1-capable loops, indicating a disparity in May, June, and August with competitive LEC results of 90.00%, 86.03%, and 86.81%, compared to Qwest results of 94.36%, 93.95%, and 92.65% respectively.

⁹² See Letter from Hance Haney, Executive Director – Federal Relations, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 at 1 (filed Sept. 22A, 2003).

⁹³ See *id.*

⁹⁴ See *id.* at 1-2.

⁹⁵ Qwest states that high-capacity loops represent 5.2% of the total loops Qwest has in service for competitive LECs in Arizona. See Qwest Application at 40; see also *Qwest 9-State Order*, 17 FCC Rcd at 26489-91, para. 341 & n.1244.

⁹⁶ Qwest's average results on the trouble rate metric for DS1-capable loops for the relevant period in Arizona are comparable to its average performance on the same metric reviewed by the Commission in the Colorado application. See *Qwest 9-State Order*, 17 FCC Rcd at 26489, para. 341 & n.1240 (summarizing Qwest's results for MR-8 (Trouble Rate) for DS1-capable loops in Colorado).

⁹⁷ See AT&T Comments at 3-25; AT&T Reply at 1-7; Letter from Karen L. Clauson, Senior Director of Interconnection, Eschelon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 at 2-3 (filed Oct. 14, 2003) (Eschelon Oct. 14 *Ex Parte* Letter).

⁹⁸ See AT&T Comments at 14; Eschelon Oct. 14 *Ex Parte* Letter at 2-3.

⁹⁹ See AT&T Comments at 10, 12; see also Eschelon Oct. 14 *Ex Parte* Letter at 2-3. In addition, we reject AT&T's argument that, in changing its facilities construction policy through the CMP, Qwest violated its obligation (continued....)

that it would not adhere to the changes that became effective on June 16 and, as a result, "Qwest's current DS1 loop construction policy is materially the same as the policy that had been applied to competitive LECs before June 16."¹⁰⁰ We note that the Arizona Commission has since adopted a staff recommendation ordering Qwest to suspend its new policy and reinstate the original policy until construction rates are approved by the Arizona Commission.¹⁰¹ Absent additional information, we are not convinced that Qwest's policy has denied competitive LECs a meaningful opportunity to compete to date.¹⁰² We also note that, although the *Triennial Review Order* was not effective at the time that Qwest filed the instant application,¹⁰³ that order clarifies incumbent LECs' obligations with regard to routine network modifications to existing facilities.¹⁰⁴ Accordingly, we decline to find that this allegation warrants a finding of checklist noncompliance.

IV. OTHER CHECKLIST ITEMS

A. Checklist Item 2

1. Other OSS Issues

30. *Ordering.* Based on the evidence in the record, we find that Qwest demonstrates that it provides nondiscriminatory access to its ordering systems and processes and generally

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to provide a change management process that allows competitors a meaningful opportunity to compete. *See supra* Section III.A.1.c.

¹⁰⁰ Letter from Hance Haney, Executive Director – Federal Relations, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 at 1-2 (filed Sept. 29C, 2003) (Qwest Sept. 29C *Ex Parte* Letter); *see* Qwest Reply at 8. We reject AT&T's request that the Commission require Qwest to state in writing again that it has reinstated the pre-June 16 policy because we find Qwest's assurances in this regard to be adequate. *See* Letter from Amy L. Alvarez, District Manager – Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 at 1 (filed Oct. 29, 2003) (AT&T Oct. 29 *Ex Parte* Letter).

¹⁰¹ *See Arizona Commission Sept. 16 Order* at 30-31. Qwest explains that it reinstated the pre-June 16 policy in response to competitive LECs' concerns before the Arizona Commission's order. *See* Qwest Sept. 29C *Ex Parte* Letter at 1. We note that the Department of Justice did not address this issue in its evaluation. *See generally* Department of Justice Evaluation. We also note that competitive LECs that filed a petition with the Commission concerning this issue have subsequently withdrawn it. *See* Letter from Patrick J. Donovan, Counsel for Cbeyond Communications, Eschelon Telecom, Focal Communications Corporation, and New Edge Networks, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Oct. 16, 2003).

¹⁰² *See Qwest 9-State Order*, 17 FCC Rcd at 26496-97, para. 349 (rejecting AT&T arguments that Qwest's original pre-June 16 policy on construction of new facilities was discriminatory).

¹⁰³ *See supra* Section II.

¹⁰⁴ *See Triennial Review Order*, 18 FCC Rcd at 17371-78, paras. 632-41. We also reject AT&T's request that the Commission require Qwest to commit that it will not alter the pre-June 16 policy without the consent of competitive LECs and the approval of the state commissions in its region. *See* AT&T Oct. 29 *Ex Parte* Letter at 1. As noted above, Qwest is currently obligated to comply with our new routine network modification rules and state commissions have processes in place to address proposed rate increases, such as that sought by Qwest in Arizona.

satisfies the performance standards governing the relevant performance measurements.¹⁰⁵ Although some commenters express concern with Qwest's rejection rates,¹⁰⁶ we find that for the relevant five-month period, Qwest's performance has generally improved,¹⁰⁷ and its rejection rates are well within the range that the Commission has previously found to be acceptable.¹⁰⁸ At any rate, the Commission does not perform a parity or direct benchmark analysis of a carrier's rejection rate, in part because a high rejection rate for one carrier does not necessarily indicate

¹⁰⁵ See, e.g., PO-3 (LSR Rejection Notice Interval); PO-5 (Firm Order Confirmations on Time). Although Qwest failed to reach the benchmark with respect to one electronic flow-through metric in Arizona during the relevant months, we do not find that this warrants a finding of checklist noncompliance. See PO-2B-2 (Electronic Flow-through for all Eligible LSRs Received via EDI, LNP%) showing an average of 88.2% compared to a 95% benchmark from April to August 2003). Qwest's overall performance with respect to electronic flow-through in Arizona is better than the flow-through demonstrated during prior Qwest 271 proceedings. See *Qwest 9-State Order*, Appendices B-J; *Qwest 3-State Order*, Appendices B-E; *Qwest Minnesota Order*, App. B. Moreover, Qwest's flow-through rates are comparable to those of other BOCs that the Commission has previously approved. See, e.g., *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02-61, *Memorandum Opinion and Order*, 17 FCC Rcd 11659, 11703-30, App. B (2002) (*Verizon Maine Order*); *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, *Memorandum Opinion and Order*, 17 FCC Rcd 12275, 12372-402, App. B (2002) (*Verizon New Jersey Order*). Finally, no competitive LEC contests Qwest's performance in this regard.

¹⁰⁶ MCI Comments at 1. Additionally, AT&T argues that, as a result of Qwest's change in its loop conditioning policy, approximately 20% of competitive LEC high-capacity loops were rejected. AT&T Comments at 2, 7; AT&T Reply at 2. AT&T does not allege, however, that the increase in rejection rates for high-capacity loop orders is the result of any underlying OSS problem. See *supra* Section III.B.

¹⁰⁷ Qwest's commercial performance for April to August shows that an average of 31% of local service requests (LSRs) submitted over Qwest's Graphical User Interface (GUI) and an average of 32% of LSRs submitted over Qwest's Electronic Data Interchange (EDI) were automatically rejected. See PO-4A-2 (LSRs received via GUI and auto-rejected) and PO-4B-2 (LSRs received via EDI and auto-rejected). For manual rejects, Qwest's commercial data show that from April to August, an average of 3% of LSRs submitted over the GUI and 5% of LSRs submitted over EDI were manually rejected. See PO-4A-1 (LSRs received via GUI and manually rejected) and PO-4B-1 (LSRs received via EDI and manually rejected). We note that Qwest's performance in July was 28.69% while its August performance improved to 25.38%. See PO-4B-2 (LSRs received via EDI and auto-rejected). See also *Qwest Reply* at 17. Additionally, a number of competing LECs experience low rejection rates (ranging from 1% to 11%) during the month of August for LSRs submitted over EDI (PO-4B-2). *Qwest Notarianni/Huff Reply Decl.*, Ex. LN-13 (Chart of CLEC-Specific Flow-Through and Reject Rates Under PO-2 and PO-4, Updated with Data from August 2003) (citing confidential information). See also *Qwest Reply* at 17; *Qwest Notarianni/Huff Reply Decl.* at para. 27.

¹⁰⁸ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 4044, para. 175 n.552 (reporting rejection rates between 28% and 34% during the relevant months of its New York section 271 application); *Qwest 9-State Order*, 17 FCC Rcd at 26357, para. 89 n.314 (Qwest's commercial performance for June to September 2002 showed that an average of 31% of LSRs submitted over the GUI and an average of 22% of LSRs submitted over EDI were automatically rejected); *Qwest Minnesota Order*, 18 FCC Rcd at 13335, para. 25 n.72 (noting that Qwest's recalculated rejection rates ranged from 19.5% to 38%).

flaws in the BOC's OSS systems or processes, but instead could be attributable to the competitive LEC's own errors.¹⁰⁹

31. *Provisioning.* We conclude, as did the Arizona Commission, that Qwest satisfies checklist item 2 with regard to provisioning in Arizona.¹¹⁰ The record demonstrates that Qwest provides nondiscriminatory access to its provisioning systems and processes and consistently satisfies the performance standards for the relevant performance measurements.¹¹¹ Moreover, the third-party test conclusions generally support our findings in this regard.¹¹² We note that no commenter raises any new issues in this proceeding relating to Qwest's provisioning capabilities.

32. *Billing.* We find, as did the Arizona Commission, that Qwest provides nondiscriminatory access to its billing functions.¹¹³ Qwest's billing systems are the same as those

¹⁰⁹ See, e.g., *Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Michigan*, WC Docket No. 03-138, FCC 03-228, Memorandum Opinion and Order, at para. 67 (rel. Sept. 17, 2003) (*SBC Michigan II Order*); *SBC California Order*, 17 FCC Rcd at 25691-92, para. 83; *SWBT Texas Order*, 15 FCC Rcd at 18442, para. 176. For example, in the *SWBT Texas Order*, the Commission noted that the order rejections varied widely by individual carrier, from 10.8% to higher than 60%, but concluded that these overall rejection rates did not appear to indicate a systemic flaw in the BOC's OSS.

¹¹⁰ See, e.g., Arizona Commission Comments at 11 (citing CGE&Y's findings).

¹¹¹ Qwest's wholesale performance reflects few missed benchmarks, with the few misses generally occurring in low volume categories. See OP-3 (Installation Commitments Met), OP-4 (Installation Interval), OP-5 (New Service Installation Quality), OP-6A (Delayed Days for Non-Facility Reasons), and OP-6B (Delayed Days for Facility Reasons) for resale, UNE-platform, UNE-platform Centrex orders, and UNE combos. Although Qwest missed the benchmark for EELs installation commitments for three of the five months, we find that the performance disparities do not appear to be competitively significant. With a benchmark of 90%, Qwest's performance in Arizona for OP-3 (Installation Commitments Met, EELs) is 94.23%, 89.80%, 85.71%, 89.29%, and 90.74% with volumes of 52, 49, 56, 28, and 54, respectively from April through August 2003. According to Qwest, facility problems caused the misses in May and June (i.e., the DS1 service could not be provisioned as engineered due to the actual make-up of the line). Qwest Reply, Attach. A at 7. Moreover, as we stated in the *Qwest Minnesota Order*, we find it difficult to draw strong conclusions regarding this data given the comparatively low volumes and the lack of complaints regarding EELs provisioning. *Qwest Minnesota Order*, 18 FCC Rcd at 13343, para. 40. Qwest also missed the OP-4 metric (Installation Interval) in April, June, July, and August for Qwest xDSL service. See OP-4 (Installation Interval, Qwest xDSL) showing 5.25, 4.86, 5.29, 5.47, and 5.12 days versus 4.99, 4.9, 4.88, 4.87, and 4.9 days for Qwest retail customers during the relevant months. However, the competing LEC volumes for Qwest xDSL resale service in Arizona were less than 20 each month and the performance disparities are not competitively significant. See, e.g., Qwest Oct. 23A *Ex Parte* Letter at 3 (noting that the difference in August was less than half a day). Moreover, as we have mentioned in the *Qwest 9-State Order*, we do not rely on Qwest's performance under the average completed interval metric as a measure of Qwest's timeliness in provisioning Qwest xDSL service. *Qwest 9-State Order*, 17 FCC Rcd at 26402, para. 163. Instead, we conclude, as we have in prior section 271 orders, that the missed appointment metric (or installation commitments met metric, as it is called in the Qwest territory), which Qwest passed in most months in Arizona, is a more reliable indicator of provisioning timeliness. *Id.*; OP-3 (Installation Commitments Met, Qwest xDSL). Therefore, we find that Qwest meets its obligations with respect to provisioning.

¹¹² See Qwest Notarianni/Huff Decl. at paras. 420-50.

¹¹³ See Arizona Commission Comments at 11 (citing CGE&Y's findings).

reviewed in previous Qwest section 271 applications, and Qwest's commercial performance data demonstrate that it generally satisfies the parity or benchmark standards.¹¹⁴

2. Pricing Unbundled Network Elements

a. Introduction

33. Checklist item 2 of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.¹¹⁵ Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."¹¹⁶ Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates for network elements must be nondiscriminatory and based on the cost of providing the network elements, and may include a reasonable profit.¹¹⁷ Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements.¹¹⁸

34. In applying the Commission's TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state's pricing determinations.¹¹⁹ We will, however, reject an application if basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.¹²⁰ We note that different states may

¹¹⁴ Qwest missed parity for three of five months on BI-3A (Billing Accuracy – Adjustments for Errors, UNEs and Resale Aggr%). In May, July, and August 2003, the competitive LEC percentages were 91.49, 96.65, and 92.08 respectively, and, during the same period of time, Qwest's retail percentages were 99.08, 99.36, and 99.05. However, we note that the difference, weighted for volumes, in performance between competitive LECs and Qwest for this five-month period was only 3.72% and find that this difference is not competitively significant.

¹¹⁵ 47 U.S.C. § 271(c)(2)(B)(ii).

¹¹⁶ 47 U.S.C. § 251(c)(3).

¹¹⁷ 47 U.S.C. § 252(d)(1).

¹¹⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515 (2001). Last year, the Supreme Court upheld the Commission's forward-looking pricing methodology for determining the costs of UNEs. *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 523 (2002).

¹¹⁹ *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-338, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17453, para. 55 (2001) (subsequent history omitted) (*Verizon Pennsylvania Order*). See also *Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

¹²⁰ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55.

reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

35. In its application, Qwest states that the UNE rates (recurring and non-recurring) adopted by the Arizona Commission comply with our TELRIC pricing rules.¹²¹ Should the Commission decline to rely on cost proceedings conducted by the Arizona Commission to find Qwest's rates consistent with the Act, Qwest also submitted a benchmark comparison to its UNE rates in Colorado that it claims demonstrates its UNE rates in Arizona fall within the range that a reasonable application of TELRIC principles would produce.¹²²

b. Background

36. *UNE Cost Proceedings.* During the course of the initial interconnection agreement arbitrations in Arizona, the Arizona Commission established interim UNE rates in August 1996 based on the FCC proxy rates.¹²³ Permanent UNE rates were established in January 1998.¹²⁴ In July 2000, the Arizona Commission developed deaveraged loop rates.¹²⁵

37. The Arizona Commission subsequently re-examined rates, establishing new UNE rates for all elements except switching in June 2002.¹²⁶ In adopting new UNE rates, the Arizona Commission relied on the HAI model sponsored by AT&T, WorldCom, and XO to set recurring

¹²¹ Qwest Application at 103; Qwest Application, App. A, Tab 24, Declaration of Jerrold L. Thompson (Qwest Thompson Decl.) at paras. 2, 13, 44.

¹²² Qwest Application at 103-04; Qwest Thompson Decl. at paras. 2, 44-49, Exs. 2-6. The Commission has stated that, when a state commission has not applied TELRIC principles or has done so improperly, then the Commission will look to rates in other section 271-approved states to see if the rates under review nonetheless fall within the range that a reasonable application of TELRIC principles would produce. In comparing the rates, the Commission has used its universal service cost model to take into account the differences in the underlying costs between the applicant state and the comparison (*i.e.*, benchmark) state for which the Commission has already found the rates to be reasonable. For recurring charges, if the percentage difference between the applicant state's rates and the benchmark state's rates does not exceed the percentage difference between the applicant state's costs and the benchmark state's costs, as determined by the universal service cost model, then the Commission will find that the applicant has met its burden to show that its rates are TELRIC-compliant. *See, e.g., Verizon Pennsylvania Order*, 16 FCC Rcd at 17456-58, paras. 63-65.

¹²³ Qwest Application, App. I, Vol. 1, Tab 1, Arizona Commission Aug. 30, 1996 Procedural Order.

¹²⁴ Qwest Application, App. I, Vol. 1, Tab 211, Arizona Commission Jan. 30, 1998 Opinion and Order, *aff'd in part and rev'd in part*, *US West Communications, Inc. v. Jennings*, 46 F. Supp. 2d 1004 (D. Ariz. 1999), *aff'd in part and rev'd in part*, 304 F.3d 950 (9th Cir. 2002).

¹²⁵ Qwest Application, App. I, Vol. 3, Tab 57, Arizona Commission July 25, 2000 Phase I Opinion and Order.

¹²⁶ Qwest Application, App. I, Vol. 3, Tab 504, Arizona Commission June 12, 2002 Phase II Opinion and Order (*Arizona 2002 Generic Pricing Order*), *appeal pending sub nom. Qwest Corp. v. Ariz. Corp. Comm'n*, Case No. CIV 02-1626 (PHX-SRB) (D. Ariz.).

rates and on the competitive LECs' non-recurring cost model to set non-recurring rates.¹²⁷ The Arizona Commission established new unbundled switching rates in December 2002.¹²⁸ The parties, however, were unable to agree on the analog line side port rate that resulted from the *Arizona 2002 Generic Pricing Order*.¹²⁹ On October 6, 2003, the Arizona Commission adopted a rate for this switching element and revised the rate for unbundled transport.¹³⁰

c. Discussion

38. Based on the evidence in the record, we find that Qwest's UNE rates are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Qwest's UNE rates satisfy checklist item 2.

39. The Arizona Commission, as explained above, conducted extensive pricing proceedings to establish wholesale rates for UNEs. It established recurring rates by using an Arizona-specific version of the HAI model advocated by AT&T, WorldCom, and XO, as well as many inputs to that model that were advocated by competitive LECs.¹³¹ The Arizona Commission also established non-recurring rates by using the non-recurring cost model advocated by AT&T, WorldCom, and XO.¹³² The Arizona Commission concluded that Qwest's UNE rates comply with the TELRIC methodology and satisfy the requirements of checklist item 2.¹³³ No commenter alleges that Qwest's rates are inconsistent with TELRIC, or that the Arizona Commission committed TELRIC errors in establishing those rates. Based on this record, we find that Qwest has met its burden to show that its prices for UNEs satisfy the statutory mandate.¹³⁴

B. Remaining Checklist Items (1, 3, and 5-14)

40. In addition to showing compliance with the statutory requirements discussed above, an applicant for section 271 authority must demonstrate that it complies with checklist

¹²⁷ *Arizona 2002 Generic Pricing Order*, at 10-11, 33-34.

¹²⁸ Qwest Application, App. I, Vol. 3, Tab 528, Arizona Commission Dec. 12, 2002 Phase IIA Opinion and Order.

¹²⁹ See Letter from Maureen A. Scott, Attorney, Arizona Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194, Attach. at 2 (Arizona Commission Oct. 6, 2003 Phase II and IIA Supplemental Opinion and Order Regarding Transport and Analog Port Rate Issues) (filed Oct. 8, 2003).

¹³⁰ *Id.*, Attach. at 1-15.

¹³¹ *Arizona 2002 Generic Pricing Order* at 10-11. For example, the Arizona Commission adopted the competitive LECs' inputs for placement costs, fill factors, and overhead costs. *Id.* at 11-12, 15-17, 20-21.

¹³² *Id.* at 33-34.

¹³³ See Arizona Commission Comments at paras. 35, 58, 65, 68, and 71.

¹³⁴ Because we find that Qwest has satisfied its burden based on our review of the record before us and on the UNE cost proceedings before the Arizona Commission, we find it unnecessary to rely on Qwest's benchmark analysis.

item 1 (interconnection),¹³⁵ item 3 (access to poles, ducts, and conduits),¹³⁶ item 5 (unbundled transport),¹³⁷ item 6 (unbundled local switching),¹³⁸ item 7 (911/E911 access and directory assistance/operator services),¹³⁹ item 8 (white pages directory listings),¹⁴⁰ item 9 (numbering administration),¹⁴¹ item 10 (databases and associated signaling),¹⁴² item 11 (number portability),¹⁴³ item 12 (local dialing parity),¹⁴⁴ item 13 (reciprocal compensation),¹⁴⁵ and item 14 (resale).¹⁴⁶ Based on the evidence in this record, we conclude, as did the Arizona Commission,¹⁴⁷ that Qwest complies with the requirements of all of these checklist items.¹⁴⁸ None of the commenting parties challenges Qwest's compliance with these items.

V. COMPLIANCE WITH SECTION 271(c)(1)(A)

41. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, the BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B).¹⁴⁹ To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."¹⁵⁰ In addition, the Act

¹³⁵ 47 U.S.C. § 271(c)(2)(B)(i).

¹³⁶ 47 U.S.C. § 271(c)(2)(B)(iii).

¹³⁷ 47 U.S.C. § 271(c)(2)(B)(v).

¹³⁸ 47 U.S.C. § 271(c)(2)(B)(vi).

¹³⁹ 47 U.S.C. § 271(c)(2)(B)(vii).

¹⁴⁰ 47 U.S.C. § 271(c)(2)(B)(viii).

¹⁴¹ 47 U.S.C. § 271(c)(2)(B)(ix).

¹⁴² 47 U.S.C. § 271(c)(2)(B)(x).

¹⁴³ 47 U.S.C. § 271(c)(2)(B)(xi).

¹⁴⁴ 47 U.S.C. § 271(c)(2)(B)(xii).

¹⁴⁵ 47 U.S.C. § 271(c)(2)(B)(xiii).

¹⁴⁶ 47 U.S.C. § 271(c)(2)(B)(xiv).

¹⁴⁷ Arizona Commission Comments at 8-18.

¹⁴⁸ See Qwest Application at 14-24 (checklist item 1), 33-35 (checklist item 3), 46-51 (checklist item 5), 51-52 (checklist item 6), 52-56 (checklist item 7), 56-58 (checklist item 8), 58-60 (checklist item 9), 60-62 (checklist item 10), 63-65 (checklist item 11), 65-66 (checklist item 12), 66-70 (checklist item 13), 70-74 (checklist item 14). We also find that Qwest complies with its UNE combinations obligations set forth in checklist item 2. See *id.* at 27-33.

¹⁴⁹ 47 U.S.C. § 271(c)(1).

¹⁵⁰ *Id.*

states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."¹⁵¹ The Commission has concluded that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers,¹⁵² and that UNEs are a competing provider's "own telephone exchange service facilities" for purposes of section 271(c)(1)(A).¹⁵³ The Commission has further held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"¹⁵⁴ which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers.¹⁵⁵ The Commission has held that Track A does not require any particular level of market penetration, and the D.C. Circuit has affirmed that the Act "imposes no volume requirements for satisfaction of Track A."¹⁵⁶

42. We agree with the Arizona Commission that Qwest satisfies the requirements of Track A.¹⁵⁷ We find that each of the following four carriers – AT&T, Cox, MCI, and Time Warner – serves more than a *de minimis* number of residential and/or business end users over its own facilities, and each represents an "actual facilities-based competitor" to Qwest in Arizona.¹⁵⁸

¹⁵¹ 47 U.S.C. § 271(d)(3)(A).

¹⁵² *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 85; see also *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20633-35, paras. 46-48 (1998) (*BellSouth Second Louisiana Order*).

¹⁵³ *Ameritech Michigan Order*, 12 FCC Rcd at 20598, para. 101.

¹⁵⁴ *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695, para. 14 (1997).

¹⁵⁵ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6257, para. 42; see also *Ameritech Michigan Order* 12 FCC Rcd at 20585, para. 78.

¹⁵⁶ *Sprint v. FCC*, 274 F.3d at 553-54; see also *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998) ("Track A does not indicate just how much competition a provider must offer in either the business or residential markets before it is deemed a 'competing' provider.").

¹⁵⁷ *Arizona Commission Sept. 29 Order at 2-7*.

¹⁵⁸ Qwest Teitzel Decl. at para. 30 & Ex. DLT-Track A/PI-AZ-1 at 3-4 (citing confidential information). We reject again Sprint's contention that because Qwest's estimation of Sprint's customers is allegedly incorrect, Qwest's overall showing on the number of competitive LEC customers in Arizona is insufficient for a finding of Track A compliance. See Sprint Comments at 8-10; *Qwest Minnesota Order*, 18 FCC Rcd at 13356, para. 61 n.229 (rejecting Sprint's argument in that proceeding). Given the large number of competitive access lines estimated to be in Arizona, and given that Qwest used the same methods to estimate access lines in prior section 271 applications that the Commission approved, we find that Sprint's concerns do not undermine the evidence that competitive LECs are serving, over their own facilities, more than a *de minimis* number of business and residential customers. *Qwest Minnesota Order*, 18 FCC Rcd at 13356, para. 61 n.229; *Qwest 9-State Order*, 17 FCC Rcd at 26318-19, para. 32 (approving Qwest's Track A estimation of lines served using the E-911 database).

Specifically, AT&T provides telephone exchange service to business subscribers predominantly over its own facilities, UNE-Loops, and the UNE-Platform.¹⁵⁹ Cox provides telephone exchange service to residential and business subscribers over its own facilities.¹⁶⁰ MCI provides telephone exchange service to business and residential subscribers predominantly through its own facilities and the UNE-Platform.¹⁶¹ Time Warner provides telephone exchange service to residential and business customers over its own facilities.¹⁶²

VI. SECTION 272 COMPLIANCE

43. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."¹⁶³ The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.¹⁶⁴ Together, these safeguards discourage, and facilitate the detection of, improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.¹⁶⁵ In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.¹⁶⁶ As the Commission has stated in prior section 271 orders, compliance with section 272 is "of crucial importance" because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.¹⁶⁷

¹⁵⁹ Qwest Teitzel Decl., Ex. DLT-Track A/PI-AZ-1 at 3.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 4.

¹⁶³ 47 U.S.C. § 271(d)(3)(B); *see also* App. C.

¹⁶⁴ *See Implementation of the Accounting Safeguards under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, 15 FCC Rcd 1161 (2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), First Order on Reconsideration, 12 FCC Rcd 2297 (1997), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997), *aff'd sub nom. Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, 14 FCC Rcd 16299 (1999).

¹⁶⁵ *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, para. 15; *Accounting Safeguards Order*, 11 FCC Rcd at 17550, para. 24; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

¹⁶⁶ *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

¹⁶⁷ *See, e.g., Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *SWBT Texas Order*, 15 FCC Rcd at 18549, para. 395.

44. Qwest Corporation (QC), which is Qwest's BOC, demonstrates that two of its affiliates – Qwest LD Corp. (QLDC), and Qwest Communications Corporation (QCC) – comply with the requirements of section 272.¹⁶⁸ In its application, Qwest stated that it would designate QCC as an active section 272 affiliate as soon as it was able to certify QCII's financial statements, which were in the process of being restated.¹⁶⁹ Qwest completed those restatements on October 16, 2003, when it filed its revised 10-K financial statements for QCII for 2000 to 2002 with the Securities and Exchange Commission.¹⁷⁰ As a result, Qwest asserts that the "books, records and accounts of QCC are being maintained in accordance with GAAP consistent with FCC requirements for a separate affiliate under Section 272."¹⁷¹

45. Based on the record, we conclude that QC and its section 272 affiliates have demonstrated compliance with the requirements of section 272. In the *Qwest 9-State Order*, the Commission noted that its judgment about Qwest's compliance with section 272 is a predictive one, as required by section 271(d)(3)(B) of the Act.¹⁷² Specifically, our task is to determine whether Qwest's section 272 affiliates, QLDC and QCC, will be complying with this requirement on the date of authorization, and thereafter.¹⁷³ We conclude that Qwest has adequately demonstrated that QLDC and QCC will be the entities providing in-region, interLATA service originating in Arizona, and both affiliates will comply with the requirements set forth in section 272.¹⁷⁴ We note that no party challenges Qwest's section 272 showing.

¹⁶⁸ QCC is a facilities-based carrier, and QLDC is a switchless reseller, both of which are wholly-owned subsidiaries of Qwest Services Corporation, which in turn is a wholly owned subsidiary of Qwest. Qwest Application, App. A, Tab 27, Declaration of Ford B. Fay at paras. 14-15; Qwest Application App. A, Tab 28, Declaration of Marie E. Schwartz (Qwest Schwartz Decl.) at para. 31. QLDC was formed in 2002 in the face of a number of accounting difficulties that prevented Qwest Communications International Inc. (QCII) from certifying whether certain of its financial statements were in compliance with generally accepted accounting principles (GAAP).

¹⁶⁹ Qwest Application at 106.

¹⁷⁰ See Letter from R. William Johnston, Vice President – Assistant Controller, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 at 1 (filed Oct. 31, 2003) (Qwest Oct. 31 *Ex Parte* Letter).

¹⁷¹ *Id.* at 2.

¹⁷² See *Qwest 9-State Order*, 17 FCC Rcd at 26516-17, para. 384 & n.1417.

¹⁷³ See *id.* at 26516-17, para. 384. In the *Qwest 9-State Order*, the *Qwest 3-State Order*, and the *Qwest Minnesota Order*, we found that Qwest was in compliance with the section 272 affiliate safeguards. In particular, as in the instant case, we approved Qwest's use of QLDC as its section 272 affiliate. *Id.* at 26517-27, paras. 385-405; *Qwest 3-State Order*, 18 FCC Rcd at 7390-92, paras. 113-15, *Qwest Minnesota Order*, 18 FCC Rcd at 13357-59, paras. 62-65.

¹⁷⁴ Cf. *AT&T Corp. v. U.S. West Corp.*, 13 FCC Rcd 21438, 21465-66, para. 37 (*Qwest Teaming Order*), *aff'd sub nom. U.S. West Communications, Inc. v. FCC*, 177 F.3d 1057 (D.C. Cir. 1999), *cert. denied*, 528 U.S. 1188 (2000). In the *Qwest Teaming Order*, the Commission considered the totality of the circumstances, rather than focusing on any one particular activity, in assessing whether the BOC was providing interLATA service within the meaning of section 271. *Id.* In making its determination, the Commission considered several factors, including (continued....)

46. The Commission has determined that QLDC satisfied the requirements set forth in section 272 in the 13 Qwest applications it has previously considered, and we make the same findings of QLDC in the instant proceeding. Thus, we focus our review here on QCC. Specifically, we determine that QCC provides evidence that it satisfies the separate affiliate requirements of section 272(a), complies with the structural and transactional requirements of section 272(b)(1)-(5), and is prepared to follow the joint marketing rules of section 272(g).¹⁷⁵ Importantly, as noted above, Qwest represents that QCC maintains its books, records, and accounts in accordance with GAAP, which is a Commission requirement to demonstrate compliance with section 272(b)(2).¹⁷⁶ We also conclude that QC will comply with section 272(c), which requires that all transactions with affiliates be accounted for in accordance with accounting principles designated by the Commission and which prohibits a BOC from discriminating in favor of its section 272 affiliates.¹⁷⁷ In addition, we conclude that QC will satisfy section 272(d) by obtaining and paying for a biennial audit.¹⁷⁸ Moreover, QC demonstrates that it will comply with section 272(e), which requires Qwest to fulfill certain requests for, among other things, telephone exchange and exchange access services from unaffiliated entities within the same time period Qwest fulfills such requests for its own retail operations.¹⁷⁹ Finally, in the event that Qwest no longer utilizes QLDC as a section 272 affiliate in the future, Qwest must, of course continue to comply with all of the Commission's rules.¹⁸⁰

VII. PUBLIC INTEREST ANALYSIS

47. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.¹⁸¹ At the same time, section 271(d)(4) of the Act states that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (Continued from previous page) _____

whether the BOC was effectively holding itself out as a provider of long distance service, and whether the BOC was performing activities and functions that were typically performed by those who are legally or contractually responsible for providing interLATA service to the public. *Id.* Similarly, we consider, for purposes of this section 271 application, the totality of the circumstances in determining whether QLDC and QCC are entities that will be providing originating in-region, interLATA service.

¹⁷⁵ Qwest Application App. A, Tab 29, Declaration of Jerome R. Mueller at paras. 18-46.

¹⁷⁶ See Qwest Oct. 31 *Ex Parte* Letter at 2. See also *Accounting Safeguards Order*, 11 FCC Rcd at 17617, para. 170.

¹⁷⁷ Qwest Schwartz Decl. at paras. 71-78.

¹⁷⁸ *Id.* at paras. 79-82. We remind Qwest that under sections 220(c) and 272(d)(3) of the Act, it must provide the Commission, and the independent auditors, with requested information in connection with the section 272(d) audit in a timely and complete manner. See 47 U.S.C. §§ 220(c), 272(d)(3).

¹⁷⁹ Qwest Schwartz Decl. at paras. 83-85.

¹⁸⁰ See, e.g., *Qwest Minnesota Order*, 18 FCC Rcd at 13359, para. 65.

¹⁸¹ 47 U.S.C. § 271(d)(3)(C); App. C, paras. 70-71.

(c)(2)(B).¹⁸² Accordingly, although the Commission must make a separate determination that approval of a section 271 application is "consistent with the public interest, convenience, and necessity," it may neither limit nor extend the terms of the competitive checklist of section 271(c)(2)(B). Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.¹⁸³

48. We conclude that approval of this application is consistent with the public interest. Following an extensive review of the competitive checklist, we find that the record confirms the Commission's view that BOC entry into the long distance market will benefit consumers and competition because barriers to competitive entry in Arizona's local exchange market have been removed, and the local exchange market is open to competition.

49. We disagree with Sprint's assertions that we must, under our public interest standard, consider a variety of other factors as evidence that the local market is not yet truly open to competition, despite checklist compliance.¹⁸⁴ We note that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance.¹⁸⁵ Additionally, we note that, according to Qwest, competitive LECs serve approximately 20 percent of the local market.¹⁸⁶ Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the failure of any number of companies to enter the market in and of themselves do not necessarily undermine that showing. As the Commission has stated in previous section 271 orders, factors beyond the control of the BOC can explain low levels of residential competition.¹⁸⁷

¹⁸² 47 U.S.C. § 271(d)(4).

¹⁸³ See *Ameritech Michigan Order*, 12 FCC Rcd at 20745-47, para. 386-90.

¹⁸⁴ Those factors include the level of competitive LEC market share, the financial strength of competitive LECs, and the failure of other BOCs to enter the market in the application states. Specifically, Sprint argues that competitive LECs have difficulty obtaining capital to expand their facilities, thus restricting their ability to remain competitive. Sprint also alleges that the uncertainty of available UNEs following the recent appeals of the *Triennial Review Order* will cause further financial pressures. Additionally, Sprint claims that low levels of residential competitive LEC entry in Arizona are indicative of competitors unwilling or unable to invest in the market, and granting the current section 271 application is not in the public interest. Sprint Comments at 4-8. Finally, Sprint infers that Qwest's methodology improperly inflates competitive LECs' line estimates and, therefore, the true market share of competitive carriers in Arizona is unknown. *Id.* at 9-10.

¹⁸⁵ See, e.g., *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77; *Sprint v. FCC*, 274 F.3d at 553-54.

¹⁸⁶ Qwest Teitzel Decl. at paras. 39-41, nn. 45-48.

¹⁸⁷ See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126. The Commission recently released an order finding that allegations of a price squeeze are relevant to the Commission's consideration of whether an applicant has met its section 271 public interest requirements. See *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00- (continued....)

50. We also reject commenters' allegations that Qwest's application is not in the public interest due to winback marketing campaigns employed by Qwest.¹⁸⁸ The Commission has previously concluded that winback campaigns are consistent with section 222(c)(1) of the Act and are not anticompetitive, and that retention marketing campaigns may be permissible assuming they do not violate the provisions of section 222(b) of the Act.¹⁸⁹ We find, as we did in the *BellSouth Georgia/Louisiana Order* that, absent a formal complaint to the Commission that Qwest has failed to comply with the provisions of section 222(b), these allegations should be referred to the appropriate state commission for disposition.¹⁹⁰ Finally, we also determine that Qwest's premature marketing does not warrant a denial of this application. On November 14, 2003, Qwest voluntarily informed the Commission that one of its telemarketing vendors inappropriately contacted 353 Arizona residents about Qwest's long distance service.¹⁹¹ According to Qwest, no sales to Arizona residents occurred and the Arizona telemarketing efforts were halted after one day.¹⁹² Based on the evidence in this proceeding, we find that this is an isolated occurrence for which we should not deny this application under the public interest standard.¹⁹³ Moreover, the Commission's Enforcement Bureau is considering this matter.

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217, Order on Remand, FCC 03-285 (rel. Nov. 12, 2003) (*SWBT Kansas/Oklahoma Remand Order*). In its comments, Sprint argues that low volumes of residential customers served by competitors and the BOC's pricing, which does not provide enough margin to make competition profitable, are evidence of a "price squeeze." Sprint Comments at 3. While we have determined that evidence of a price squeeze (*i.e.*, where the margin between UNE rates and retail rates precludes efficient competitors from entering a market) is relevant to our public interest review, Sprint fails to state a specific claim supported by pricing or other evidence to establish such a violation in Arizona. See *SWBT Kansas/Oklahoma Remand Order* at para. 13. Indeed, as mentioned above, no party raises any pricing issue in this proceeding. See *supra* Section IV.A.2.

¹⁸⁸ Commenters state that Qwest has commenced a series of anticompetitive advertising campaigns that violate competitive principles generally and Qwest's SGATs specifically. Eschelon Oct. 14 *Ex Parte* Letter at 4-5. Letter from Jonathan Askin, General Counsel, Association for Local Telecommunications Services, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 at 1-2 (filed Oct. 17, 2003).

¹⁸⁹ 47 U.S.C. § 222(b). Section 222(b) of the Act prohibits a carrier from using carrier proprietary information to retain soon-to-be-former customers when the carrier gains notice of a customer's imminent cancellation of service through the provision of carrier to carrier service.

¹⁹⁰ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9186-88, paras. 301-03. Eschelon also argues that another Qwest advertising campaign violates sections of the Arizona SGAT because Qwest refers to itself as the underlying provider of an unidentified competitive LEC's service to an end user. Eschelon Oct. 14 *Ex Parte* Letter at 3-4. While Qwest disagrees with Eschelon's interpretation of the SGAT, we find that an alleged SGAT violation is best handled by the appropriate state commission. See Qwest Oct. 23A *Ex Parte* Letter at 3. Finally, we determine that Qwest's alleged conduct does not warrant a finding that Qwest's application is not in the public interest.

¹⁹¹ See Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-194 (filed Nov. 14, 2003) (attaching a November 13, 2003 letter filed with the Enforcement Bureau).

¹⁹² *Id.*, Attach. at 2.

¹⁹³ We note that our finding is consistent with Commission precedent. See, *e.g.*, *SBC Michigan II Order* at para. 186 (citing *Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon* (continued....))

A. Assurance of Future Compliance

51. As set forth below, we find that Arizona's Performance Assurance Plan (PAP) provides assurance that the local market will remain open after Qwest receives section 271 authorization in this state.¹⁹⁴ We find that this plan will likely provide sufficient incentives to foster post-entry checklist compliance. In previous orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market.¹⁹⁵ Although it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms, the Commission has stated previously that the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.¹⁹⁶ The PAP, coupled with the Arizona Commission's active oversight of it, and provisions for comprehensive review every six months to determine whether modifications are necessary, provide additional assurance that the local market in Arizona will remain open.

52. The Arizona PAP closely resembles the PAPs the Commission reviewed in the recently approved *Qwest 9-State Order*, *Qwest 3-State Order*, and *Qwest Minnesota Order*.¹⁹⁷ The Arizona PAP was developed through a review process involving the Arizona Commission and competitive LECs operating in Arizona, and incorporates the key elements that the Commission has previously concluded should be included in an adequate post-entry PAP with respect to Qwest.¹⁹⁸ Following an open proceeding, on June 5, 2002, the Arizona Commission deemed the Qwest PAP to be compliant with the requirements of the Act.¹⁹⁹

53. We conclude that the Arizona PAP provides incentives to foster post-entry checklist compliance. As in prior section 271 orders, our conclusions are based on a review of

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Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware, WC Docket No. 02-157, Memorandum Opinion & Order, 17 FCC Rcd 18660, 18751-55, paras. 163-68 (2002); *Verizon New Jersey Order*, 17 FCC Rcd at 12367-68, paras. 188-90).

¹⁹⁴ — Arizona Commission Comments at 24.

¹⁹⁵ See, e.g., *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487-88, para. 127.

¹⁹⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-98. We note that in all of the previous applications that the Commission has granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long distance market. These mechanisms are administered by the state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6).

¹⁹⁷ *Qwest Application* at 118; *Qwest 9-State Order*, 17 FCC Rcd at 26546-48, para. 442; *Qwest 3-State Order*, 18 FCC Rcd at 7394-95, paras. 120-21; *Qwest Minnesota Order*, 18 FCC Rcd at 13361, para. 70.

¹⁹⁸ *Qwest Application* at 118.

¹⁹⁹ Arizona Commission Comments at 24.

several key elements in the performance remedy plan: total liability at risk in the plan, performance measurement and standards definitions, structure of the plan, self-executing nature of remedies in the plan, data validation and audit procedures in the plan, and accounting requirements.²⁰⁰ The structure of these plans is similar to tiered plans that the Commission approved in previous section 271 orders.²⁰¹ The PAP places at risk about 44 percent of Qwest's Arizona local operating service net income, which puts it in line with those that the Commission has previously considered.²⁰² Also, as mentioned above, the PAP includes provisions for continuing PAP review by the Arizona Commission.²⁰³

54. As the Commission has stated in prior orders, the PAP is not the only means of ensuring that a BOC continues to provide nondiscriminatory service to competing carriers.²⁰⁴ We are cognizant that in addition to the monetary payments at stake under the plan, Qwest faces other consequences if it fails to sustain an acceptable level of service to competing carriers, including enforcement provisions in interconnection agreements, federal enforcement action pursuant to section 271(d)(6), and remedies associated with other legal actions.

B. Unfiled Interconnection Agreements

55. In light of its present compliance and all other circumstances discussed in this section, we conclude that Qwest's past conduct with respect to unfiled interconnection agreements does not warrant denial of this application on public interest grounds. Although no party comments on this issue, we find, as we did in prior Qwest orders, that concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest's submission of agreements to the Arizona Commission pursuant to section 252 and the Arizona Commission's approval of those agreements.²⁰⁵

56. The Arizona Commission has conducted several proceedings regarding unfiled interconnection agreements between Qwest and competitive LECs. On July 25, 2003, the Arizona Commission staff and Qwest reached a settlement agreement concerning all issues

²⁰⁰ See, e.g., *Qwest 9-State Order*, 17 FCC Rcd at 26546-48, para. 442.

²⁰¹ See, e.g., *id.*

²⁰² Qwest Application at 119.

²⁰³ Arizona Commission Comments at 24.

²⁰⁴ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4165, para. 430; *SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421; *Verizon Pennsylvania Order* 16 FCC Rcd at 17489, para. 130.

²⁰⁵ Qwest Application at 123-24 (indicating that it submitted for approval all previously unfiled agreements to the Arizona Commission in September 2002 and May 2003, and the Arizona Commission approved all of these agreements by operation of law). As we noted in the *Qwest Minnesota Order*, state commission approval of these previously unfiled agreements eliminates the possibility of noncompliance with section 252 as competitive LECs are able to opt-in to these agreements pursuant to section 252(i). *Qwest Minnesota Order*, 18 FCC Rcd at 13365-66, para. 80. See also *id.*, 18 FCC Rcd at 13367, para. 83; *Qwest 9-State Order*, 17 FCC Rcd at 26553-54, para. 453; *Qwest 3-State Order*, 18 FCC Rcd at 7325, paras. 124-42.

raised in the Arizona Commission's unfiled agreements docket.²⁰⁶ While the Arizona Commission has not yet approved this settlement agreement, consistent with our precedent, we do not require this phase of a state proceeding to be completed before we can find no discrimination on a forward-looking basis.²⁰⁷

57. In the future, parties remain free to present other evidence of ongoing discrimination, for example, through state commission enforcement processes or to this Commission in the context of a section 208 complaint proceeding.²⁰⁸ Further, to the extent past discrimination existed, we anticipate that any violations of the statute or our rules will be addressed expeditiously through federal and state complaint and investigation proceedings.²⁰⁹

VIII. SECTION 271(d)(6) ENFORCEMENT AUTHORITY

58. Section 271(d)(6) of the Act requires Qwest to continue to satisfy the "conditions required for . . . approval" of its section 271 application after the Commission approves its application.²¹⁰ Thus, the Commission has a responsibility not only to ensure that Qwest is in compliance with section 271 today, but also that it remains in compliance in the future. As the Commission has already described the post-approval enforcement framework and its section 271(d)(6) enforcement powers in detail in prior orders, it is unnecessary to do so again here.²¹¹

59. Working in concert with the Arizona Commission, we intend to monitor closely Qwest's post-approval compliance for Arizona to ensure that Qwest does not "cease[] to meet any of the conditions required for [section 271] approval."²¹² We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in Arizona. We are prepared to use our authority under section 271(d)(6) if evidence shows market opening conditions have not been maintained.

²⁰⁶ Arizona Commission Comments at 20. See also Qwest Application, App. K, Tab 1652, July 25, 2003 Notice of Filing Settlement Agreement and Request for an Expedited Procedural Conference (providing for, among other things, cash payments and discount credits).

²⁰⁷ See, e.g., *Qwest Minnesota Order*, 18 FCC Rcd at 13367, para. 83.

²⁰⁸ *Qwest 9-State Order*, 17 FCC Rcd at 26554, para. 453.

²⁰⁹ *Id.* We are seriously troubled by Qwest's decision to delay filing twelve interconnection agreements with the Arizona Commission until May 23, 2003. We note that the issue of Qwest's unfiled agreements has already been referred to the Enforcement Bureau for investigation and appropriate enforcement action. See *Qwest Minnesota Order*, 18 FCC Rcd at 13371, para. 93.

²¹⁰ 47 U.S.C. § 271(d)(6).

²¹¹ See, e.g., *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6382-84, paras. 283-85; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53.

²¹² 47 U.S.C. § 271(d)(6)(A).

60. Consistent with prior section 271 orders, we require Qwest to report to the Commission all Arizona carrier-to-carrier performance measurement results and PAP monthly reports beginning with the first full month after the effective date of this Order, and for each month thereafter for one year unless extended by the Commission. These results and reports will allow us to review, on an ongoing basis, Qwest's performance to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Qwest's entry into the long distance market in Arizona.²¹³

IX. CONCLUSION

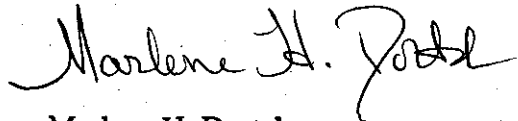
61. For the reasons discussed above, we grant Qwest's application for authorization under section 271 of the Act to provide in-region, interLATA services in Arizona.

X. ORDERING CLAUSES

62. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 271, Qwest's application to provide in-region, interLATA service in the state of Arizona, filed on September 4, 2003, IS GRANTED.

63. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE December 15, 2003.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

²¹³ See, e.g., *Bell Atlantic-New York, Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Order, 15 FCC Rcd 5413, 5413-23 (2000) (adopting consent decree between the Commission and Bell Atlantic that included provisions for Bell Atlantic to make a voluntary payment of \$3,000,000 to the United States Treasury, with additional payments if Bell Atlantic failed to meet specific performance standards and weekly reporting requirements to gauge Bell Atlantic's performance in correcting the problems associated with its electronic ordering systems).